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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,224	06/28/2005	Darren Paul Bruce	U 015364-I	1759
140	7590	07/09/2007		
LADAS & PARRY 26 WEST 61ST STREET NEW YORK, NY 10023			EXAMINER KAVANAUGH, JOHN T	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 07/09/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/507,224	BRUCE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	/Ted Kavanaugh/	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6-28-2005</u> . | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. Claims 4-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 depends from itself and therefore it is incomplete and indefinite.

Claim 7 is inaccurate inasmuch as the first mating element (19) is a female element and not male as claimed.

Claim 9 is inaccurate inasmuch as the second mating element (20) is a male element and not female element as claimed.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6,8 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2368314 (Marx).

Marx teaches a footwear system comprising interchangeable covers (uppers) of different shapes to change/alter the appearance of the shoe assembly (see page 1, col. 1, lines 14-16). The sole portion is provided with an upwardly extending rim portion (24) provided with a first mating element (anchoring member 25,25,50) and the cover having a second mating element (27,27a,87). Regarding claims 16 and 17, any portion of the

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cover (upper) of Marx is inherently a portion capable of receiving and displaying promotional indicia.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7,9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marx '314.

Marx teaches a footwear system comprising interchangeable covers (uppers) of different shapes to change/alter the appearance of the shoe assembly (see page 1, col. 1, lines 14-16). The sole portion is provided with an upwardly extending rim portion (24) provided with a first mating element having a substantially v-shaped section (see figure 9) and the cover having a second mating element (27,27a,87 all show different shapes of second mating elements) including one having a v-shaped section (87). The v-shaped sections have matching protrusions (55,56) and recesses (recesses as formed by the hooks 87). Marx lacks teaching the first and second mating elements to be reversed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the first and second mating means (i.e. first mating element being male and the second mating element being female), since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

6. Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 13 above, and further in view of US 4887369 (Bailey et al).

Bailey teaches a footwear system with interchangeable covers that are provided with different colors and patterns, see col. 1, lines 25-28. It would have been obvious to provide the footwear covers as taught above to have covers of varying colors and patterns, as taught by Bailey, to provide a greater range of designs for the wearer.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:

-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”

--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”

-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571) 273-8300 (FORMAL FAXES ONLY). Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

/Ted Kavanaugh/  
Primary Examiner  
Art Unit 3728

TK  
June 12, 2007